

Unreputable
IN THE HIGH COURT OF DELHI AT NEW DELHI

+CCA No.7 /2001 and CM Appl.6185/2008
&
CM Appl. No.99/2001 in Cont. Cas. No.295/1993
in
WP(C) No.2792/1988

Date of Hearing: 09.09.2008

Date of Decision: 25.09.2008

CCA No.7 /2001 and CM Appl.6185/2008

#Director General Works, CPWD & Anr.

!

.....Petitioners

Through: Ms.Jyoti Singh with
Mr.Ankur Chhibber

Versus

\$Kendriya Lift Karamchari Sangh (Regd.)

^

.....Respondents

Through Ms.Maninder Acharya

AND

CM Appl. No.99/2001 in Cont. Cas. No.295/1993

#All India CPWD Employee's Union (Regd.)

!

.....Petitioners

Through Mr.R.K. Kapoor

Versus

\$Secretary, Ministry of Urban Development

^

.....Respondents

Through Nemo

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE MANMOHAN SINGH

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. Various employment related disputes arose between the CPWD

Management and its workers' Union because of certain demands

raised by the Union. Instead of invoking adjudicatory machinery for settlement of these disputes by the Industrial Tribunal under the Industrial Tribunals Act (in short the 'Act'), the parties chose the forum of arbitration as provided under Section 10A of the Act. Both the parties nominated one arbitrator each, who gave their respective but conflicting awards. In view of difference of opinion between the two arbitrators, appointment of Umpire was necessitated, who was accordingly appointed.

2. The said Umpire gave his award dated 31.1.1988. Though the workmen felt satisfied with the award of the Umpire, the Union of India/CPWD chose to challenge the same and filed WP(C) No.2792/88 in this Court. This writ petition was partially allowed vide order dated 28.1.1992 setting aside the award of the Umpire. We may note at this stage that the Umpire vide his award merged some categories of assistants with fully skilled categories, de-categorized some unskilled workers as semi-skilled and semi-skilled workmen as highly skilled workmen. For the purpose of getting into higher category from semi-skilled to higher skilled etc., principle of certain length of service was adopted. In some categories the requirement of trade test for the purpose of promotion was abolished and in certain other categories of workmen method of promotion and the ratio qua promotes and direct recruits was also prescribed. The Court, however, set aside this portion of the award clarifying that such a trade test shall have to be passed for

the purposes of entry into higher category in promotion. Against that judgment, the Union of India preferred Special Leave Petition, which was, however, dismissed *in limini* by the Supreme Court on 12.8.1993. Though in this manner the said award of the Umpire, as modified, had attained finality, its implementation remains a thorny issue. The disputes have now arisen about the interpretation of the award with respect to certain directions contained therein.

3. We are not concerned with various issues dealt with and decided in the said award. The bone of contention is the grant of selection grade to 'skilled artisans', i.e., whether it is to be given automatically on the completion of eight years' service or there are some other pre-conditions to be fulfilled by the workers to get the said grade.
4. Before we come to the pivotal issue, which has become a mega issue, we deem it necessary to complete the sequence of facts. After the dismissal of the SLP, the Union of India did not take steps for implementation of the award which led the workers' union to file an application in this Court seeking direction for implementing the order dated 28.1.1992 vide which writ petition of the Union of India was dismissed. This application was disposed of on 25.8.1993 directing the Secretary, Ministry of Urban Development to implement the aforesaid order by 31.9.1993. As those orders did not yield any result, three contempt petitions were filed by the workers' union and some other workers. Notices in these contempt petitions were issued to the Union

of India. The Union of India entered appearance and sought, through an application, six months further time to give effect to orders dated 25.8.1993. At the same time the respondents resisted the petition as well stating that no contempt was made out. Affidavit was filed explaining the position in which, *inter alia*, it was submitted by the respondents that only that part of the award remained unimplemented which dealt with assistant categories of workmen with main categories. According to the respondents, with the said merger and its further re-classification as highly skilled category amounted to outright promotion without qualifying the prescribed test. Thus, such a recommendation in the award could not be accepted and higher scales could not be granted automatically after the expiry of eight years. This was disposed of vide order dated 19.11.1996.

5. In the order dated 19.11.1996 that was passed, the decision dated 28.1.1992 was analyzed and it was pointed out that according to the respondents, the award in respect of the lift operators was not altered or modified or clarified in any manner by the Court in its order dated 19.11.1996 and the CPWD was directed to implement the award in its entirety.

6. However, when no steps were taken and CPWD failed to grant the selection grade to the lift operators, another CCP bearing No.106/1997 was filed which was decided vide orders dated 25.5.1998. In this order, after taking note of the entire sequence of events the Court

again pointed out that scope of order dated 28.1.1992 was explained by the Court vide its subsequent order dated 19.11.1996 and the Court had found that (a) the category of unskilled, semi-skilled or highly skilled has more relevance to the type of job or the work that is handled and therefore, mere work experience of five years in a particular category does not automatically qualify a person to go to the higher ladder; and (b) the umpire had overlooked the important aspect that if trade test is abolished and the workman is permitted to automatically go to the higher category, all incentives for efficiency and excellence will go from the service and therefore, his recommendation in this behalf in the award could not be accepted. The Court did not approve the automatic upgradation of a workman from one category to another like from unskilled to semi skilled and from semi skilled to highly skilled merely because a workman had completed regular continuous service of a certain number of years, ignoring the requirements of trade test.

7. It was, thus, held that in the said decision the Court had only accepted the objections pertaining to placing of workmen from unskilled category to semi-skilled category or highly skilled category, which it thought to be crucial and held that upgradation from one category to another was in the nature of promotion, which could not be granted automatically merely on the strength of continuous service. While holding so it was also observed that it was not open to the respondents

to raise the controversy with regard to the merger of Assistant category with main category and its re-classification and, therefore, the respondent could not decline to implement the award in so far as the question of merger of Assistant categories with the main categories with the re-classification, as recommended in the final award was concerned. The Court also noted the developments which had taken place during the pendency of the said contempt petition, namely, on 29.8.1997. It had summarized the points of controversy on which, according to the employees, the award in their favour had still not been implemented and these were: i) re-classification of merged categories as highly skilled; ii) non-grant of selection grade as per the award to certain categories, one of which being Lift Operators; and iii) the existing highly skilled category employees having not been granted Grade-III, II and I, as the case may be, as per the award. -

8. The Court answered and clarified this issue in the following manner:-

“As already noticed herein above, in the judgment dated 28 January 1992, the Court did not approve in principle an automatic upgradation of a workman from one category to another like from unskilled to semi-skilled and from semi skilled to highly skilled, merely because a workman had completed regular continuous service of certain number of years and it was held that the requirement of trade test, wherever prescribed, for “promotion” from one category to another could not be given a go-bye and in fact had to be adhered to. In view of the said authoritative pronouncement, we find force in the stand of the CPWD that after merger, further re-classification to highly skilled category cannot be made because as per the rules governing the employees of CPWD, for the categories of employees in question, placing

them in the next higher category amounts to promotion, for which a trade test is prescribed. It was, however, submitted by Mr.R.K. Kapoor, learned counsel for the employees union, that re-classification of certain merged categories into highly skilled category in terms of the award is only a change of label which has no element of promotion and, therefore, afore noted observations in the decision dated 28 January 1992 will not apply. Mr. Kapoor's contention is that only that part of the award has been set aside by this Court where the Umpire has recommended upgradation to next category by abolishing the requirement of trade test and not that part of the award which only recommends re-categorization. Having carefully perused the said judgment, we are unable to agree with learned counsel for the employees Union. We find that the Court has disapproved in principle the abolition of trade test wherever it is prescribed for next promotion. We, therefore, accept the stand of the CPWD that after merger of various categories in terms of the award, if a workman has to be upgraded to the next higher category in that stream, which has an element of promotion, he has to undergo the trade test, if so prescribed. We feel that this classification is in consonance with the two decisions of this Court rendered on 28 January 1992 and 19 November 1996 and hope that it will bring to an end all doubts and controversies in that behalf. With this clarification, we direct that all other points raised in the affidavit of the employees union dated 2 September 1997 shall be resolved by the CPWD in terms of the award, which has to be accepted and implemented by the CPWD in letter and spirit. We do not consider it necessary to further explain the recommendations made in the award."

9. It is clear from the above that not only in its order dated 19.11.1996 it was clarified that there was no automatic promotion and wherever trade test is prescribed for promotion from one category to another, same has to be adhered to.

10. According to the respondents, in spite of orders dated 25.9.1998 the CPWD did not implement the award in respect of lift operators and thus, CCP No.66/1999 was filed again. In this CCP orders dated

29.5.2001 is passed directing the CPWD to give the benefits to the lift operators and that is the order which is in appeal before us.

11.This appeal was earlier heard and decided vide judgment dated 31.7.2001 holding that no contempt was made out and CCP was not maintainable. Therefore, appeal was allowed and CCP No.66/1999 dismissed. However, the Court had heard the arguments only on the maintainability of the appeal but decided the appeal on merits without hearing the counsel. The respondents challenged the order by filing appeal in the Supreme Court. The Supreme Court accepted this contention of the respondents herein and allowed the appeal, setting aside the said order and remitting the case back to this Court for fresh consideration. On 2.11.2007 counsel for the respondents made a statement before this Court that they were giving up their challenge to the maintainability of this appeal. This statement was reiterated on 9.9.2008. It is for this reason that we have to decide the appeal only on merits, treating the appeal as maintainable.

12.Having taken note of the aforesaid events, we may now point out the basis on which the respondents alleged contempt and non-implementation of orders dated 25.9.1998 passed by this Court. We have already extracted the relevant portion of orders passed by the Division Bench on 25.9.1998. After giving the said clarification the Court had passed following directions in that order:-

“After hearing learned Counsel for the Unions and the CPWD, vide order dated 29th August, 1997, we summarized the points of controversy, on which, according to the employees, the award in their favour has still not been implemented. These were: (i) re-classification of merged categories as highly skilled; (ii) non-grant of selection grade as per the award to certain categories, one of which being Lift Operators and (iii) the existing highly skilled category employees having not been granted Grade-III, II and I, as the case may be.”

13.The grievance of the respondents was that though direction was given to CPWD to implement the award, CPWD has not done so. It is clear that the direction to CPWD was to implement the award as modified vide orders dated 28.1.1992 and as clarified in the orders passed on 25.9.1998. Therefore, we may first revert to the award.

14.We notice that the two arbitrators, nominated by each party, had differed with each other on certain aspects which led to the appointment of the umpire. The two arbitrators were Sh. H.S. Vats and Sh.G.K. Khemani. Sh. M.G. Wanare was appointed as the umpire. The umpire concurred with some of the findings of Sh. H.S. Vats. We are concerned here with the opinion expressed by Sh.H.S. Vats in para (n), which reads as under:-

“n) Regarding demand of Party No.2 to give Selection Grade after 8 years of service strictly on the basis of seniority, I feel end of justice shall be meet if after service of 8 years all the ‘Skilled artisan are given Selection Grade in the pay scale of Rs.330-480/-.”

15.The learned umpire in his award, while agreeing on certain aspects with Mr.Vats, particularly in respect of classification of different categories of staff, opined as under:-

“I am in agreement with classification of different categories of staff with the opinion of Shri H.S. Vats, Brother Arbitrator at item (e), (f), (g), (l), (n), (o), (p), (q), (r), (s), (t), to the extent of ratio fixed and in that respect I award accordingly.”

16.In view of umpire’s agreement with Sh.Vats in respect of his opinion at certain items, including item (n), the submission of the respondents is that the umpire agreed that selection grade is to be given to the Lift Operators after 8 years of service on the basis of seniority alone and there is no stipulation or pre-condition of passing any test. This submission is accepted by the learned Single Judge. In the impugned order, distinction is drawn between the grant of selection grade in the pay scale of Rs.330-480/- (pre-revised) after 8 years of service and promotion which could be given only after passing the prescribe trade test as per the clarification issued by the Court in various previous orders. The learned Single Judge was of the opinion that the grant of selection grade has nothing to do with promotion and therefore, passing of the trade test was not necessary. Submission of the CPWD/appellant that the umpire had agreed with Sh.Vats only with respect to classification of different category of staff and therefore, inclusion of para (n) was a typographical error, did not find favour with

the learned Single Judge, who opined that no such plea was ever taken by CPWD earlier at any point of time and such a plea was clearly afterthought.

17. We have already pointed out the clarifications, which were given by this Court earlier on 19.11.1996 and 25.5.1998. What is pointed out in the order dated 25.5.1998 is that in the earlier order dated 19.11.1996, the Court had found that (a) the category of unskilled, semi-skilled or highly skilled has more relevance to the type of job or the work that is handled and therefore, mere work experience of five years in a particular category does not automatically qualify a person to go to the higher ladder and (b) the umpire had overlooked the important aspect that if trade test is abolished and the workman is permitted to automatically go to the higher category, all incentives for efficiency and excellence will go from the service and therefore, his recommendation in this behalf in the award could not be accepted. The Court did not approve the automatic upgradation of a workman from one category to another like from unskilled to semi skilled and from semi skilled to highly skilled merely because a workman has completed regular continuous service of a certain number of years, ignoring the requirements of trade test. The Lift Operators/respondents are demanding selection grade after eight years of service on the basis of seniority, in view of the umpire's award agreeing with the opinion of Sh.H.S. Vats, Arbitrator, in respect of directions to this effect contained

in para (n). We have already extracted para (n) above as per which, Sh.Vats had held that such workmen, including the Lift Operators to be eligible for selection grade after eight years of service on the basis of seniority.

18. Normally, grant of selection grade after specified years of service is altogether different from grant of higher scale on the basis of promotion. Selection grade in the same post can be granted on the basis of seniority which may not amount to promotion. For this, it is nowhere mentioned that the concerned Lift Operators is to pass the trade test. The clarifications which were given by orders dated 19.11.196 and 25.5.1998 was that the workmen would not automatically go to higher category and there was no question of automatic upgradation of a workman from one category to another merely on the basis of regular continuous service ignoring the requirement of trade test.

19. In order to succeed, it is incumbent upon the CPWD to show that by grant of selection grade, i.e., higher grade after completion of eight years of service it would amount to either promotion or upgradation from one category to another, like from unskilled to semi-skilled or from semi-skilled to highly skilled. No such attempt was even made by the learned counsel for the CPWD to show that grant of selection grade would amount to upgradation of Lift Operator from one category to other. It is, thus, clear that grant of selection grade is within the same

category and would not amount to upgradation of a workman from one category to another. It is in the same category that higher grade, i.e., selection grade is given. This becomes abundantly clear from the reading of para (n), which permits grant of selection grade after eight years of service to all the “skilled artisans”. Therefore, these Lift Operators are already treated as skilled artisans and are going to get selection grade after specified years of service. They would remain skilled artisans and are not going to be upgraded in so far as their category is concerned.

20. The learned Single Judge, thus, rightly opined that grant of selection grade had nothing to do with promotion and therefore, passing of trade test was not necessary. In view of this, we do not find any merit in the contention of the learned counsel for the appellant that inclusion of para (n) in the award of the umpire was a typographical error. It is matter of record that against the award dated 31.1.1988 writ petition was filed, which was partly allowed vide orders dated 28.1.1992 by observing that whenever there is a promotion or upgradation of category, passing of trade test was necessary. This aspect was clarified vide orders dated 19.11.1996 and 25.5.1998. At no stage, in so many proceedings taken out for implementation of the award CPWD came out with the plea that inclusion of para (n) in the umpire’s award was a typographical error. We, therefore, are in

agreement with the observations of the learned Single Judge that such a plea was clearly an afterthought plea.

21. From any angle the matter is to be looked into, no ground for interfering with the orders of the learned Single Judge is made out. We accordingly dismiss this appeal with costs. As a consequence, the amount deposited in this Court shall be disbursed to the respondents. Balance amount shall also be paid to the respondents/Lift Operators within three months from today. CM Appl.6185/2008 stands disposed of.

22. CM Appl. No.99/2001 in Cont. Cas. No.295/1993

By means of this application the workmen/petitioners in Cont. Cas. No.295/1993 are seeking revival of the contempt proceedings. Since appeal of the Union of India/CPWD against 29.5.2001 passed by the learned Single Judge directing the respondents to make payment as per the award within three months has been dismissed by us in today's date and we have granted three months' further time to the CPWD to make payment, it is not necessary to pass any orders in this application at this stage. This application is accordingly disposed of. However, liberty is granted to

the applicants to seek revival of Cont. Cas. No.295/1993 in case orders
are not implemented within the period granted by us.

(A.K. SIKRI)
JUDGE

September 25, 2008
hp.

(MANMOHAN SINGH)
JUDGE